

# **DRAFT FOR DISCUSSION PURPOSES**

## **TOWN OF BLUE RIVER, COLORADO**

### **ORDINANCE NO. 2024-05**

**AN ORDINANCE OF THE BOARD OF TRUSTEES OF THE TOWN OF BLUE RIVER, COLORADO, AMENDING SECTIONS OF ARTICLE 4 OF CHAPTER 16B AND AMENDING THE DEFINITION OF “SETBACK” IN ARTICLE 3 OF CHAPTER 16, IN THE BLUE RIVER MUNICIPAL CODE (CHAPTERS OF THE BLUE RIVER LAND USE CODE) ALL PERTAINING TO THE MEASUREMENT OF SETBACKS FROM RIGHTS-OF-WAYS, ROAD EASEMENTS, AND RIVER EASEMENTS**

**WHEREAS**, the Town of Blue River was incorporated in 1964 as a statutory municipality organized pursuant to the provisions of Section 31-2-101, et seq., C.R.S.; and

**WHEREAS**, [*Sections to be inserted to outline the historic nature of the Town’s control and use of a prescriptive easement for roads*];

**WHEREAS:**

- A. Colorado state law authorizes municipalities to regulate land use and development including but not limited to ensuring adequate setbacks to best protect the health, safety and welfare of the public.
- B. In 2023, the Board of Trustees for the Town of Blue River (“Board”) adopted in 2023 the Blue River Land Use Code (“LUC”) which is a part of the Blue River Municipal Code, to govern and regulate the use of land within the Town; and
- C. The LUC regulates the location of buildings and structures within a lot by the use, in part, of “setbacks” which are commonly understood to be a set distance from a property line or from a point, line, easement, land feature (such as water body, floodplain, or steep slope), or other recognized element found within or adjacent to a lot; and
- D. The Board of Trustees finds that the construction of buildings and structures in close proximity to public roads, and also in areas of floodways and floodplains, presents a potential harm to both the occupants of the building or structure and the public; and
- E. The Board of Trustees finds that it is commonly accepted planning and land

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development practices to require a setback of buildings and structures from roads to protect the health safety and welfare of the public; and

- F. The determination of the appropriate setbacks and appropriate means of measuring a setback is a legislative determination of a municipality.

**BE IT ORDAINED** by the Board of Trustees of the Town of Blue River, Colorado, as follows:

**Section 1. Amendment of Section 16B-4-30(b)(3).** Subsection (b)(3) of Section 16B-4-30 of the Municipal Code of the Town of Blue River titled *Easements* is amended to read as follows:

- (3) Road Easements (Recorded, Public and/orPrivate) and Access Easements.

Easements for roads or access (both public and private) are often created and recorded with the Summit County Clerk and Recorder’s Office to reserve property for vehicular traffic and to provide for permanent access to property. Such easements are not available for any development or improvement other than overhead and subsurface utilities that will not interfere with the existing or future use of the road within the road easement or the access secured by the easement.

**Section 2. Amendment of Section 16B-4-30(b) by Renumbering Subsections (4), (5), (6), and (7).** Subsection (b)(4) through Subsection (7) of Section 16B-4-30(b) of the Municipal Code of the Town of Blue River titled *Easements* is amended by renumbering as follows:

| Current Subsection Number | New Subsection Number |
|---------------------------|-----------------------|
| (b)(4)                    | (b)(6)                |
| (b)(5)                    | (b)(7)                |
| (b)(6)                    | (b)(8)                |
| (b)(7)                    | (b)(9)                |

**Section 3. Amendment of Section 16B-4-30(b) by Addition of New Subsections (4) and (5).** Subsection (b) of Section 16B-4-30 of the Municipal Code of the Town of Blue River titled *Easements* is amended by the addition of new subsections (4) and (5) to read as follows:

- (4) Town Road Easement.

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The Town has claimed and established a prescriptive Town Road Easement (the “Town Road Easement”) for the entire travelled portion of all constructed roads that the Town has, historically and for more than 20 years, openly, adversely, notoriously, and exclusively managed, maintained, repaired, plowed, and controlled for the purpose of providing for a road system accessible to the general public. The Town maintains a publicly available map illustrating the names and general locations of the Town Road Easements and Town Road System. The Town will physically mark the boundaries of the Town Road Easement for a property owner upon reasonable request. The Town’s claimed Road Easement does not include lawfully recognized and recorded private roads that the Town has historically maintained in accordance with a written maintenance or management agreement with a homeowner’s association, neighborhood or civic association, or property owner.

(5) Town Road Maintenance Easement.

The Town has claimed and established a prescriptive Town Road Maintenance Easement (the “Town Road Maintenance Easement”) for the property immediately adjacent to a Town Road Easement (see Section 16B-4-30(b)(4)). The Town Road Maintenance Easement includes ten (10) feet of property along the Town Road Easement which the Town has, historically and for more than 20 years, openly, adversely, notoriously, and exclusively managed and controlled for the purpose of maintaining the Town Road Easement. Such management and control includes the use of the easement for lateral support of the Town Road Easement, borrow ditch, drainage improvement, Town authorized signage such as traffic control signs, and snow storage.

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**Section 3. Amendment of Section 16B-4-2.** Section 16B-4-30 of the Municipal Code of the Town of Blue River titled *Setbacks* is amended to read as follows:

**Sec. 16B-4-20. Setbacks.**

Setbacks (front, rear, and sides) are established by the Zone District that is assigned to a lot. See Chapter 16A - Zoning. Setbacks are a specified distance measured from either: (a) the front, rear, and sides of the property line that defines the boundaries of the lot; or (b) the boundary of an easement as required by Section 16B-43-40 (Buildable Area). Setbacks effectively define the initial location within the lot in which the principal permitted building or structure may be lawfully constructed, erected, or maintained except as expressly permitted by the Land Use Code. Such initial location is subject to limitations imposed by easements and other encumbrances.

**Section . Amendment of Section 16B-4-40(a)(1).** Section 16B-4-40(a)(1) of the Municipal Code of the Town of Blue River titled *Buildable Area* is amended to read as follows:

(a) Determining Building, Structure, and Accessory Improvement Location. When seeking Town approval of the location within a lot of any building, structure, accessory improvement, or other improvement regulated by the Land Use Code, the owner or applicant shall demonstrate a consideration of the following when deciding the appropriate location of the building, structure, accessory improvement, or other improvement:

1. The *lot's* setbacks imposed by the applicable zone district. (see Chapter 16A – Zoning);

Although front, side, and rear setbacks established by a zone district are typically measured from the lot lines of the property, certain easements shall require measurement from the boundary of the easement nearest the building or structure when the easement encroaches into the lot. Such easements are:

a. Road Easements (Recorded Public and Private). See Section 16B-4-30(b)(3).

b. Town Road Easements. See Section 16B-4-30(b)(4).

c. Recorded River Easements. See Section 16B-4-30(6).

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**Section .** **Amendment of Section 16-3-20.** Section 16-3-20 of the Municipal Code of the Town of Blue River titled *Definitions* is amended for the definition of “Setback” to read as follows:

*Setback* means the distance required by the lot’s zone district (see Chapter 16A) between the drip edge of a building or proposed building and the closer of the lot line or the edge of any public right-of-way, ~~or Road~~ Recorded Road Easement (public or private), Town Road Easement, or recorded River Easement, access and pedestrian easements, unless a different distance is established by a Town-approved site plan, subdivision plat, annexation or development agreement, or other document approved by the Town.

*Interpretive Note for Setback:* The phrase “within a setback,” “within the setback” or “within the setbacks” shall be interpreted to refer to the area defined as a setback and shall not mean within the area enclosed by or that results from the application of two or more setbacks. The area enclosed by or results from the application of setbacks to a lot, which area is outside of the setbacks, is known as the ~~buildable area~~ Buildable Area (see definition above).

**Section 3.** **Severability.** Should any one or more sections or provisions of this Ordinance or of the Code provisions enacted hereby be judicially determined invalid or unenforceable, such judgment shall not affect, impair, or invalidate the remaining provisions of this Ordinance or of such Code provision, the intention being that the various sections and provisions are severable.

**Section 4.** **Repeal.** Any and all Ordinances or Codes or parts thereof in conflict or inconsistent herewith are, to the extent of such conflict or inconsistency, hereby repealed; provided, however, that the repeal of any such Ordinance or Code or part thereof shall not revive any other section or part of any Ordinance or Code provision heretofore repealed or superseded.

**Section 5.** **Minor Revision or Correction Authorized.** The Town Manager, in consultation with the Town Attorney, is authorized to make minor revisions or corrections to the codified version of the provisions of this Ordinance provided that such revisions or corrections are grammatical, typographical, or non-substantive and do not alter or change the meaning and intent of this Ordinance.

**Section 6.** **Effective Date.** The provisions of this Ordinance shall become effective thirty (30) days after publication following the final passage.

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**INTRODUCED, READ, PASSED, ADOPTED, AND ORDERED PUBLISHED** at a regular meeting of the Board of Trustees of the Town of Blue River, Colorado, held on the            day of                     , 20  .

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Town Clerk

Published in the Summit County Journal \_\_\_\_\_, 20  .

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**Left Overs:**

**WHEREAS**, the Town recognizes and understand that, *if* the Town does not hold and exercise the right to operate and maintain the public road system, including the right of use of the adjacent land for historic maintenance, citizens will be responsible *individually* for the operation and maintenance of the road system at the individual citizen's cost and expense; and

**WHEREAS**, expecting individual citizens to ensure the safe, open, and readily available public access to Colorado Highway 9 will be problematic, if not impossible; and